SYED AZMAN SYED MOHAMED

v.

LIAN SENG (KL) CONSTRUCTION CO. SDN. BHD.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[CIVIL SUIT NO. S7-22-776-1989]
10 SEPTEMBER 1992

CONTRACT: *Construction - Language of contract is clear and precise - Court must give effect to intention of parties.*

CONTRACT: *Specific Performance - Whether s. 6 of Specific Relief Act 1950 precludes reliance on s. 8 of Strata Titles Act 1985.*

LAND LAW: *Strata title - Whether vendor under contractual obligation and/or statutory compulsion to procure and transfer strata title - Section 151A National Land Code 1965 - Section 8 Strata Titles Act 1985 ss. 6, 8, 10 - Strata Titles (Amendment) Act 1990.*

STATUTORY INTERPRETATION: *Scrutiny of explanatory statement to a Bill - Whether permissible.*

Pursuant to a sale and purchase agreement dated 23 March 1971 ("S&P agreement"), the plaintiff purchased the third floor of a 5 storey building ("the said building"). Upon completion of the said building the plaintiff had paid the purchase price but to date no strata title for the said floor had been delivered. The plaintiff, in 1989 sued the defendants for specific performance for immediate delivery of the strata title or alternatively for damages for non-delivery of the strata title.

The defendants contended that:

(a) that the sale and purchase agreement was governed by the National Land Code 1965 ("NLC") and not the Strata Title Act 1985 ("STA") and both the legal interest and title of the land was vested in the defendants under the NLC.

(b) That the conveyance referred to in Clause 13 of the sale and purchase agreement was an interest in the undivided shares of the said land and not a strata title.

(c) That they were unable to specifically perform by delivering a strata title to the plaintiff.

(d) That the approval for strata titles had not been granted by the appropriate authorities;

(e) That the plaintiff had no title to sue as he had assigned all its interest to a third party.

(f) That the disputed property was not properly identified by the plaintiff. Therefore, the defendants were willing to rescind the sale and purchase agreement by refunding the purchase price with normal interest.

The main issues before the Court was:

(i) whether the defendants were legally obliged to process the strata title for the plaintiff and upon issuance of the said strata title, to transfer the same to the plaintiff.

(ii) Whether the Judge could refer to the explanatory statement to a Bill to construe the meaning of words in a statute.

Held:

[1] The terms of the sale and purchase agreement dated 23 March 1971 were clear and precise that the defendants were contractually obliged to obtain strata title for the plaintiff, as was actually agreed by the defendants in their statement of defence and the affidavit affirmed on 11 April 1990.

[2] Evidence showed that the defendants todate had not applied to the Pengarah Jabatan Tanah Wilayah for the said strata title. On this ground alone judgment could be given to the plaintiff.

[3] Although under s. 151 of the NLC 1965 the building owners were under no legal obligation to obtain strata titles to purchaser, the following subsequent legislation compelled building owners to obtain such titles to purchaser:

(i) An amendment to NLC 1963 on 29 May 1981 inserted s. 151A;

(ii) Sections 8 and 10 of the Strata Titles Act 1985

(iii) Section 8(2) Strata Titles (Amendment) Act 1990

The above provision of law had not been complied with by the defendants.

[Plaintiff's application allowed with costs.]

Cases referred to:
Pang Chon Kong v. Chew Teng Cheong 4 PCC 231 ***(foll)***
Peer Mohamed V.M. v. Great Eastern Life Assurance Co. Ltd. 4 PCC 399 ***(foll)***
State of West Bengal v. Union of India [1963] AIR SC 1241 ***(refd)***

Legislation referred to:
National Land Code 1965, s. 151A
Rules of the High Court 1980, O. 81
Specific Relief Act 1950, ss. 6, 18
Strata Titles Act 1985, ss. 6, 8(1), (2)(b), (4), (5), (6), 10

Other source referred to:
Bindra's Interpretation of Statute, 7th Edn., at pp. 387 & 388

For the plaintiff - Rueben Mathiavaranam; M/s. Azman Davidson & Co.
For the defendants - M.S. Murthi; M/s. Murthi & Partners

JUDGMENT

Lim Beng Choon J:

In this suit the plaintiff is claiming for specific performance of a sale and purchase agreement dated 23 March 1971 ("S & P agreement") pursuant to which the plaintiff purchased and the defendants sold the third floor of a proposed 5-storey building ("the said building") to be built on Lot 395 Section 57 in the Town and District of Kuala Lumpur. The said building was duly completed in or around 1973 and the plaintiff paid the full purchase price of RM20,900 but todate no strata title for the third floor has been delivered to the plaintiff by the defendants. The plaintiff alleged that the defendants, in contravention of the then s. 151A of the National Land Code 1965 ("NLC") and/or s. 8 of the Strata Titles Act 1985, had and still have wrongfully failed and refused to deliver the strata title of the third floor to the plaintiff; neither did they take any positive steps towards the delivery of the said strata title despite numerous requests from the plaintiff. The plaintiff therefore prays for specific performance of the immediate delivery of the strata title of the third floor. Alternatively the

plaintiff prays for damages for non-delivery of the said strata title in addition to or in alterations (?) for specific performance under s. 18 of the Specific Relief Act 1950 (Act 137). The words "in alterations" have been wrongly used and the correct words should be "in substitution".

This suit was filed on 3 October 1989 and after the defendants had entered appearance, the plaintiff took out a summons-in-chambers on 15 December 1989 for an Order of the Court pursuant to O. 81 of the Rules of High Court 1980 for specific performance of the immediate delivery of the strata title of the third floor of the building known as No. 52-C Jalan Sultan Ismail, Kuala Lumpur which is held under Grant 9495, Lot 1138 pursuant to the S & P agreement. It is to be noted that the title of the land in dispute as mentioned in the Summons differs from the title stated in para. 1 of the statement of claim of the plaintiff. I mention this difference at the outset since the defendants raised this difference as an issue in their defence.

The defence of the defendants as set out in their statement of defence filed on 17 January 1990 may be summarised as follows:

(a) the S & P agreement was governed by the NLC and not the Strata Titles Act 1985 and the legal interest and title of the land in question was vested in the defendants under the NLC;

(b) the conveyance referred to in Clause 15 of the S & P agreement was not a strata title but merely an interest in the undivided shares of the said land;

(c) the defendants are incapable of specifically performing by delivering a strata title to the plaintiff which the latter is in any event not entitled to the said relief;

(d) the defendants have done its utmost to procure the issuance of separate titles but the approval has not been granted by the appropriate authorities;

(e) in the alternative the plaintiff has no title to sue as he has assigned all its interests to a third party.

The defendants then concluded their defence by saying that they are willing to rescind the S & P agreement and to refund the purchase price of RM19,900 with nominal interest.

From my scrutiny of the pleadings of the respective parties, the summons-in-chambers of the plaintiff, the affidavits of the plaintiff in support of his case and the affidavits of the defendants in opposing the plaintiff's application, the main issue posed to this Court for consideration is whether the defendants are enjoined by law to procure the said strata title for the plaintiff and upon issuance of the said strata title, to transfer the same to the plaintiff.

In considering the aforementioned issue it is necessary in the first place to examine the S & P agreement (see exhibit SASM1). It is stated in the last recital that:

> AND WHEREAS the vendors intend applying for approval for sub-division of the said land leading to the **issue of a separate title** to each floor of the said building ...
>
> (Original emphasis)

Clause 6(b) likewise provides:

> 6. The vendors shall at their own cost charge and expense -
>
> (a) (not relevant)
>
> (b) upon the execution of this agreement apply for and use their best endeavour and take all necessary steps to obtain approval for the subdivision of the said land or as the case may be the said building under the provisions of the National Land Code 1965 so as to

lead **to the issue of a separate title to the said** Property. (Emphasis supplied). (It is also to be noted the third floor purchased by the plaintiff is referred to in the S & P agreement as "the said Property").

Finally there is Clause 15 which says that provided the purchaser has paid the full purchase price and duly observed and performed the various terms and conditions and stipulations under the S & P agreement:

> the vendors shall within fourteen (14) days of such payment as aforesaid on the issue of the relevant document of title whichever shall be the later execute a valid and registrable transfer of the same in favour of the Purchaser's nominee free from all encumbrances and **shall deliver to the Purchaser the said documents of title to the said Property.**
>
> (Emphasis supplied)

To my mind reading the two Clauses 6(b) and 15 in the light of the aforementioned recital, it is clear that the parties to the said agreement agreed that the defendants, as vendor are contractually obliged not only to take all necessary steps to carry out the subdivision of the said building but also to obtain a separate title for each of the subdivided units which can only mean strata title for each of the subdivided units. It is trite law that when the language of a contract is clear and precise the Court must give effect to the intention of the parties (see *Pang Choon Kong v. Chew Teng Cheong* 4 PCC 231 and *Peer Mohamed V.M. v. Great Eastern Life Assurance Co. Ltd.* 4 PCC 399).

This proposition is supported by the averment of the defendants in their statement of defence and confirmed by the affidavit in reply of Dato' Wong Kee Tat, the director of the defendants, affirmed on 11 April 1990 where it was said that the defendants have done its utmost to procure the issuance of separate titles. If that be so this avertment is incompatible with the defendants' suggestion that they are not contractually bound to obtain strata titles for the individual subdivided units bearing in mind that in taking steps to procure such titles the defendants would have to incur expenses. I therefore hold that the defendants are bound under the S & P agreement to procure strata title in respect of the said property sold to the plaintiff. Furthermore, as averred by the plaintiff in his affidavit in support of his application dated 8 December 1989, the defendants had not at least up to 19 January 1988, made any application to the Pengarah Jabatan Tanah Wilayah for a strata title in respect of the said property (see exhibit SASM3). There is also no evidence to show that the defendants have, from January 1991 till even today, made any such application for strata title. On this ground alone judgment should be given to the plaintiff.

With regard to the alternative defence of the defendant by which they claimed that they are "incapable of specifically performing by delivering a strata title to the Plaintiff", it is to be noted that this defence is based on the defendants' allegation that the S & P agreement was governed by the NLC and not the Strata Titles Act 1985 and under the NLC the conveyance of the beneficial interest to the plaintiff could only be confined to an interest in the undivided shares of the land in question (see paras. 4 to 7 of the affidavit of Dato Wong Kee Tat affirmed on 11 April 1990). Hence according to the defendants the plaintiff's claim is misconceived. In considering this issue it is necessary to examine the legislative history of the enactment of the NLC and the Strata Titles Act 1985.

I have taken upon myself to scrutinise the explanatory statement introducing the National Land Code Bill. Before doing so I have examined the law to see whether the said explanatory statement could be looked at in considering the issue raised by the defendants. It has been held that a scrutiny of an explanatory statement to a Bill is permissible within certain limits. Thus in *Bindra's Interpretation of Statutes* 7th Edn. at pp. 387-388 it is stated:

The statement of objects and reasons may not be used for the purpose of construing the meaning of a particular word in an enactment, yet it can be referred to, for the limited purpose of ascertaining the conditions prevailing at the time which actuated the sponsor of the Bill to introduce the same and the extent and urgency of the evil which is sought to be remedied. While the statements and objects cannot be used as aids to construction they can be used for the limited purpose of understanding the background and antecedent state of affairs leading up to the legislation, of finding the object of the Legislature in enacting the statute where all other methods of interpretation fail, and also in order to find out what was the mischief which the legislation aimed at. Such statement can legitimately be referred to for correct appreciation of -

(i) what was the law before the Act was passed;

(ii) what was the mischief or defect for which the law had not provided;

(iii) what remedy the legislature had appointed; and

(iv) the reasons for the remedy.

If it is necessary to cite a decided case I would refer to the case of *State of West Bengal v. Union of India* AIR [1963] SC 1241.

It was stated in the explanatory statement introducing the National Land Code Bill that the whole of Chapter 4 of Part Nine Sub-Division of Building was entirely new. It comprised of Clauses 151 to 157 and its purpose was to enable large buildings to be subdivided internally into "parcels" so that separate titles could be issued to individual flats, offices, suites etc. Clause 151 enacted the machinery for the proprietor of any alienated land held as one lot to apply to the State Director of Land to subdivide into parcels, each to be held by him under a separate subsidiary title, any building thereon having two or more storeys wholly above ground level. This Clause 151 was subsequently passed and duly enacted as s. 151 of the NLC. Thus it can be seen that even in 1965 when the NLC was enacted there was already in existence provision for the issue of separate subsidiary titles for individual flats, offices, suites within a large building.

It is to be noted that s. 151 of the NLC is only an enabling provision in that it afforded a machinery whereby owners of the lands on which multi-storey buildings had been built would be able to obtain separate subsidiary titles to purchasers of the internal subdivided parcels of the buildings. The owners of such lands were under no statutory compulsion to obtain the subsidiary titles. However on 29 May 1981 the said Chapter 4 of Part Nine was amended with the insertion of a new s. 151A which provided a time frame within which an application for the subdivision of multi-storey building into separate parcels which had been sold to a purchaser must be made. Failure on the part of the owner of the land to do so was an offence and the owner was liable on conviction to a fine.

Sections 151 to 157 of the NLC were repealed by the Strata Titles Act 1985 (Act 318) with effect from 1 June 1985. Section 6 of that Act provides for the subdivision of any buildings having two or more storeys on alienated land held as one to be internally subdivided into individual units or parcels. Section 8(1) thereof compelled the owner of such alienated land to apply for subdivision of any two or more storeys building built thereon into separate parcels pursuant to s. 10 if at any time he had sold or agreed to sell any such parcel to any person and the application should be made within the prescribed periods as provided in subsection (2) of s. 8. A subdivision under s. 10 would ultimately lead to the issue of a strata title to each subdivided parcel.

On 23 February 1990 the Strata Titles (Amendment) Act 1990 came into force by which a number of amendments were made to the Strata Titles Act 1990. The amendment to s. 8(2) relevant to the present case reads as follows:

> (2) The period within which the requirement of subsection (1) shall be complied with is as follows:
>
> (a) (not applicable);
>
> (b) in the case of a building completed on a date before the commencement of this subsection:
>
> (i) if the sale of or agreement to sell any parcel of the buildings, or the first of such sales or agreements took place before that date, the period is six months from the commencement of this subsection.

From the above legislative history of the enactment of the NLC and the Strata Titles Act 1985 it is clear that even under the National Land Code as amended on 29 May 1981 the defendants were under a statutory duty to acquire a separate title for the said property purchased by the plaintiff. The defendants should have done so on or before 29 November 1981 that is six months from 29 May 1981 the date in which s. 151A of the NLC came into force. By 1 June 1985 when the Strata Titles Act 1985 came into force, the defendants were enjoined by s. 8 read with s. 10 thereof to apply for the subdivision of the said building and thereafter a strata title would be issued in the name of the plaintiff as registered proprietor of the subdivided parcel of the said building. On 23 February 1990 when s. 8 of the Strata Titles Act 1985 was amended the defendants were again enjoined to subdivide the said building within six months from the commencement of the Strata Titles (Amendment) Act 1990.

From the above discussions it is clear that the defendants are enjoined by contractual obligations as well as statutory provisions to have the said building subdivided leading to issue of strata title to the plaintiff. It has been argued by Counsel for the defendant that the plaintiff could not rely on s. 8 of the Strata Titles Act 1985 to seek specific performance as the said s. 8 is a penal law and s. 6 of the Specific Relief Act 1950 provides:

> Specific relief cannot be granted for the mere purpose of enforcing a penal law.

This argument of learned Counsel is to say the least misleading. In the present case the plaintiff does nothing more than to enforce his rights under the S & P agreement to require the defendants to apply for subdivision of the portion of the 5-storey building purchased by him under the S & P agreement. In referring to s. 8 of the Strata Titles Act 1985 he merely points out to this Court that the defendant's contractual obligation to obtain a strata title is reinforced by statutory provisions. Hence the sole purpose of his asking for specific relief is to enforce his civil rights and not I repeat not, for the mere purpose of enforcing a penal law. Another point taken up by Counsel for the defendants is that while the title of this land in question was described in the S & P agreement as Certificate of Title 13462 Lot 395 Section 57 Town & District of Kuala Lumpur, the plaintiff in his statement of claim described the said land as Lot No. 395 Section 57 in the Town & District of Kuala Lumpur. To compound the confusion the plaintiff in the summons-in-chambers dated 15 December 1989 described the title of the said land as Grant 9445, Lot 1138. Counsel therefore suggested that plaintiff had failed to identify the land which formed the basis of his case.

The short answer to the second point taken up by Counsel for the defendant is that the contentions raised by him in his submissions were never pleaded in the defendants' statement of defence. Neither were the contentions mentioned in the affidavit in reply of Dato Wong

Kee Tat dated 13 April 1990. On the contrary the defendants in their statement of defence admitted to the averment of the plaintiff that the 5-storey building was built on Lot No. 395 Section 57 in the Town & District of Kuala Lumpur. Their main defence as stated earlier is that the defendants are not obliged under a S & P agreement to acquire the strata title for the said property and in any event they had already applied for the strata title but no approval had been obtained from the appropriate authorities. As to their first contention that they are not obliged to acquire the strata title, I have already dealt with this issue and I need say no more than that the defendants are wrong. As to the identity of the land in question the plaintiff has in affirming his further affidavit III given an explanation by producing exhibit SASM6 annexed thereto which shows that the original title of the said land was C.T. 13462 Lot 395 Section 57 and on 5 November 1985 this title was replaced by Grant 9445 Lot 1138 Section 57 Bandar Kuala Lumpur. Bearing in mind that the S & P agreement was executed in 1971 it therefore described the land in question as held under the original title and not the replacement title. I think this is sufficient answer to the contention raised by the defendants' Counsel.

One last point raised by the defendants is that the defendants are incapable of specifically performing the delivery of a strata title to the plaintiff. By this I take it that they are relying on the fact that even if they are obliged to apply for subdivision of the building they cannot do so now since the six months' period specified in s. 8(2)(b) of the Strata Titles Act 1985 had expired as at 23 August 1990 and under subsection (4) of s. 8 of the said Act, the Director of Lands & Mines could only grant one extension for a further period not exceeding three months upon an application made to him **before** the expiry of the original 6 month period. It is therefore suggested that it is now too late for this Court to order them to specifically perform their obligation to apply for a subdivision of the said building and to obtain the strata title of the third floor purchased by the plaintiff. This contention of the defendants is, to my mind, totally without any merit. The said subsection (4) should not be read in isolation. It should be read with the other sections of the said Act in particular subsection (5) of s. 8. Read in this way I have no doubt that the said Act provides that:

(i) the proprietor is allowed six months from 23 February 1990, when the amendment to s. 8 of the Strata Titles Act 1985 came into effect, to apply for subdivision of the building pursuant to subsection (1) of s. 8 of the said Act;

(2) should the proprietor fail to do so within the stipulated period he could apply to the Director of Lands & Mines for an extension and the said Director is empowered to grant him one extension not exceeding three months provided the application is made prior to the expiry of the stipulated 6 month period;

(3) should the proprietor fail to carry out the subdivision of the building within the extended 3-month period or should the proprietor fail to apply at all for the subdivision of the building thereby contravening s. 8(1) of the said Act, then he is liable to be charged for an offence under subsection (5) of s. 8;

(4) when the proprietor is so charged and is convicted he would have to pay the penalty as set out in the subsection (5) of s. 8;

(5) upon payment of the fine imposed by subsection (5) of s. 8, the proprietor can thereafter apply to the Director of Lands & Mines pursuant to subsection 1 & 2 of s. 8 for the subdivision of the building leading to issue of a strata title under s. 10 of the said Act;

(6) the Director of Lands & Mines has power under subsection (1) of s. 8 to deal with an application made by a proprietor who has been convicted of an offence and who has duly paid the fine imposed by subsection (5) of s. 8.

In support of proposition (5) and (6), one should take note of the penalty clause where it is provided that a proprietor convicted of an offence under subsection (5) of s. 8 is penalised with a lump sum fine not exceeding RM5,000 and with a further fine not exceeding RM1,000 **for each day the offence continues to be committed.** Bearing in mind that as long as the proprietor fails to comply with subsection (1) of s. 8, he would be considered as having committed an offence under the said subsection (5) for the whole period in which he fails to comply with s. 8(1) and he could be penalised with a fine of RM1,000 per day. That being the case the proprietor would be placed in a ridiculous position if one were to construe subsection (4) of s. 8 to mean that the Director of Lands & Mines has no power to deal with an application for subdivision after the 6-month period stipulated in subsection (2)(b) of s. 8 has terminated. I cannot, therefore, accept the contention of the defendants when they say that they cannot be compelled to specifically perform their obligations to apply for subdivision of the building and to obtain a strata title for the third floor.

For the above reasons the application of the plaintiff by way of summons-in-chambers dated 15 December 1989 is allowed. The defendants are ordered to apply for the subdivision of the said building to the appropriate authority within one month from the date of this Order. Upon the grant of the strata title for the third floor purchased by the plaintiff the same shall be delivered to the plaintiff forthwith. Costs of the proceedings are to be paid by the defendants.

Also found at [1992] 4 CLJ 2194